* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 856-57 of 2006 Reported

Reserved on : 16th July, 2007
Date of Decision: 6th August, 2007

SANJAY BHANDARI & ANOTHER … PETITIONER
Through: Shri Suman Kapoor, Advocate

Vs.

C.B.I. … RESPONDENT
Through: Shri R. C. Tewari, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr.Justice S. Ravindra Bhat

1. The present revision petition is preferred against an impugned order dated 23.11.2006 of the Special Court charging the petitioner for offences under Section 120-B I.P.C. read with Section 420/467/468/471 and Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947 and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

2. Briefly the prosecution version is that M/s R.K. Bhandari(Homepath) Private Limited was maintaining a current account with Vijaya Bank, R.K. Puram. Later on the name of that company was changed to M/s R.K.B. Herbals Private Limited(Accused no.5, hereafter A-5). The Petitioner allegedly started a fictitious business concern styled M/s Indian Herbs, with an address, which was infact a shed of the DSIDC and was not even allotted to him. It was allotted to Sh. Deepak Bhandari in 1977 for manufacturing homeopathic medicines and was sold to Sh. Sohan Lal Mittal. The petitioner opened current account at M/s UCO Branch of Delhi High Court for realizing payments from M/s Vijaya Bank by becoming proprietor of M/s Indian Herbs against bogus hundis(drawees bills) drawn on M/s R.K.B. Herbals Private Ltd.

3. The prosecution, after concluding investigations, filed a charge sheet, which alleged the the petitioner Smt. Sonia Bhandari w/o Sh. Sanjay Bhandari, petitioner no.1 signed bogus invoices and hundies of M/s Indian Herbs as "S. Mehta". This was confirmed by the handwriting expert. This was reflective of *mens rea* and complicity in a criminal conspiracy to cheat M/s Vijaya Bank in the guise of DBD transactions. It was alleged that the petitioner submitted and accepted those bogus invoices and hundis on behalf of M/s R.K.B. Herbals Pvt. Ltd, submitted them to M/s Vijaya Bank which were purchased on its behalf by N. Bhojaraj Shetty, A-1;

the petitioner received payments against such four hundis worth over Rupees thirteen lakh in the name of his bogus firm M/s Indian Herbs. He deposited the proceeds with the M/s UCO Bank. It was alleged that these facts reveal that the petitioner floated the fictitious firm on paper for misappropriating funds of M/s Vijaya Bank.

4. The prosecution had averred in the charge sheet that the petitioners, committed the act of criminal conspiracy with the other accused with an intention to cheat M/s Vijaya Bank, R.K. Puram Branch, New Delhi, by misrepresenting facts, submitting bogus documents and misappropriating and misutilising funds to the tune of Rs. 86.99 lakhs. This caused wrongful gain to the petitioner and other accused, who were Directors of the company M/s R.K.B. Herbals Limited.

5. The learned counsel for the petitioners submitted that in the loan applications dt.30/01/1987 and 02/02/1987 submitted by the company to M/s Vijaya Bank, they had disclosed the fact that credit facilities to the tune of Rs. 52 lakhs had been obtained from M/s Indian Overseas Bank. Thereby, the information of credit facilities availed from M/s Indian Overseas Bank was well within the knowledge of the then Divisional Manager Sh. A.B.S. Shetty, who a named accused in the FIR which is reflected from the statement of the Public Witness.

Further, in the second loan application dated 24.10.1987 submitted to M/s Vijaya Bank, the company did not refer about the credit facility availed from M/s Indian Overseas Bank since that fact had been already referred to in the earlier application. The Bank was aware of this fact. Moreover, the second loan application was for for the "Herbal Unit" at Parwanoo, and for only Rs. 1 crore which was 50% of the amount sought in the first loan application. Thus, loan application dated 20.02.1987 of the Company was for the Homeopathy Division and herbal division for Rs. 2 crores. The proposal was deferred by the Bank. The later proposal submitted by the company on 24.10.1987 was for a completely separate unit to be set up in Himachal Pradesh, for which no prior facility had been availed from any bank including Indian Overseas Bank.

6. Learned counsel further argued that the second petitioner Smt. Sonia Bhandari had signed as 'S.Mehta' on the Bills and Hundies of M/s Indian Herbs since that was her maiden name shown in the passport as well. Learned counsel for the petitioner urged that the FIR leading to the framing of impugned charges was filed as the Recovery Suit against the Company did not yield results. The learned counsel for the petitioner further submitted the petitioners were needlessly roped in, though no criminality could be attributed to their actions. The disputes with the bank were civil in nature, due to a commercial transaction.

7. Learned counsel for the petitioner further submitted that a compromise was arrived at between the Bank and the Company before the Debt Recovery Tribunal wherein the Company paid a sum of Rs. 1,30,00,000/- towards full and final settlement and the Bank issued "NO DUE CERTIFICATE" to it. No useful purpose would be served in proceeding with criminal charges. He relied upon the decision in *Naresh Chandra & Anr. v CBI* (Cr. MC 945/2002 decided on 18-9-2003 by this court) and *K. Prabhakar Hegde v State & Ors.* (Cr. MC. 4486/2003, decided on 27-4-2005, by this court). In both the decisions, the court quashed criminal proceedings, upon compromise arrived at between the creditor bank and the borrower accused.

8. Learned counsel further submitted that since there was a compromise between the bank and the petitioners and other accused persons, and a compromise decree was passed by the D.R.T. in the Suit instated by the Bank, the same for all intents and purposes, amount to compounding of the offence of cheating. Counsel also relied on the judgment of the Supreme Court in *C.B.I. v Duncans Ag*ro Industries Ltd., Calcutta, 1996-(005)-SCC -0591 where it was held that even if an offence of cheating is prima facie constituted, the offence is compoundable. Compromise decrees in suits instituted by Banks, for all intents and purposes,

amount to compounding of the offence of cheating.

9. The materials and circumstances which persuaded the learned Special Judge to frame charges against the petitioner were:

(1) Statement of PW-6, an employee of A-5 (the company) that Indian Herbs was a fictitious business concern, created on paper, *inter alia,* by the petitioners. Its object was to obtain finance from Vijaya Bank by discounting bills drawn on A-5.

(2) The petitioners opened an account with UCO Bank, in 1989; this was realized for utilizing proceeds of pay orders in favour of Indian Herbs by Vijaya Bank against bogus bills drawn on A-5.

(3) Indian Herbs did not have any business premises, in the given address. Several bills were signed by "S.Mehta" none other than the first petitioner's wife, the second petitioner. They were accepted by the petitioner as director of A-5, presented to Vijaya Bank, which issued pay orders by discounting the fake bills.

(4) P-22 spoke about the first petitioner calling Vijaya Bank for the purpose of discounting bills. The bank was unaware that Indian Herbs was owned by that petitioner.

10. The loss caused to the bank was substantial. According to the allegations, amounts sanctioned for use by A-5 were siphoned off by the petitioners in conspiracy with other co-accused, by the devise of floating a fictitious firm called Indian Herbals; there were no transactions to back the bills issued by A-5. The bank was induced to part with huge amounts. The credit line became sticky.

11. I am not impressed withe submission of learned counsel that the financial liabilities towards the loan transactions have been discharged and that ought to be the *rationale* for setting aside the charges. Such settlement between the borrower/accused and a bank, is extraneous factor as far as the alleged commission of offences are concerned. The Supreme Court held that settlement of such civil disputes should not influence the court seized of criminal proceedings, in its judgment reported as *Inspector of Police, CBI Vs. Rajagopal* JT 2002 (2) SC 331.

12. The court cannot undertake a meticulous and detailed scrutiny of the material, or the exercise would run the danger of a pre-trial examination of the case on merits; an action cautioned against by the Supreme Court in *State of MP -vs- S.B. Johari* 2000-(106)-CRLJ -0944 -SC, in the following terms:

> *"In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether accused are guilty or not. It was done without considering the allegations of conspiracy relating to the*

charge under S. 120-B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn. Further, the High Court failed to consider that medicines are normally sold at a fixed price and in any set of circumstances, it was for the prosecution to lead."

13. On an overall conspectus of all the facts I am of the view that the opinion in the impugned order and charges being framed against the petitioner, cannot be characterized as illegal or contrary to the materials on record. The allegations about the petitioners' involvement in Indian Herbals, a firm which opened accounts that were used to appropriate monies sanctioned to A-5, and the alleged *modus operendi,* do show that the conduct and involvement of the petitioners point to grave suspicion of their having committed the offences they are charged with. At the stage of framing charges the court should only consider the broad probabilities, from the materials produced, to infer whether *prima facie* grave suspicion exists about the involvement of the concerned accused. Such exercise should not be meticulous and detailed. The trial court therefore did not commit any error of law warranting exercise of jurisdiction.

14. For the above reasons, this petition has to fail. It is clarified, however, that the observations in this order were meant only for considering the correctness of the order on charge; they shall not be construed as an expression of the merits of

the case. All rights, contentions and defences available in law are hereby reserved.

The petition is accordingly dismissed.

DATED: S. RAVINDRA BHAT

6th August, 2007 JUDGE